

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION**

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In re	:	
	:	
LAMBUTH UNIVERSITY,	:	Chapter 11
	:	
Debtor.	:	Case No. 11-11942 GHB
	:	
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**JOINDER OF THE TRUSTEE TO RADIAN ASSET ASSURANCE INC.'S
OBJECTION TO DEBTOR'S EMERGENCY MOTION FOR AN ORDER
AUTHORIZING DEBTOR TO ENTER INTO LEASE OF PREMISES TO
THE STATE OF TENNESSEE, BOARD OF REGENTS**

The Bank of New York Mellon, as trustee (the “Trustee”),¹ by and through its undersigned counsel, hereby joins (the “Joinder”) in the objection, dated August 3, 2011 (the “Objection”)² (Docket # 100), of Radian Asset Assurance Inc. (“Radian”) to the *Debtor’s Emergency Motion for an Order Authorizing Debtor to Enter into Lease of Premises to the State of Tennessee, Board of Regents* (the “Motion”) (Docket # 87). In support of the Joinder, the Trustee states as follows:

BACKGROUND

1. The Bank of New York Mellon Trust Company, N.A. is the Trustee under that Indenture of Trust, dated as of September 1, 1995 (the “Indenture”), executed by The Health, Educational and Housing Facility Board of the City of Jackson (the “Issuer”) in favor of the Trustee, which provides for the issuance of (i) the \$6,780,000 The Health, Educational and Housing Facility Board of the City of Jackson (Tennessee) Higher Education Facility Revenue

¹ The Trustee is successor trustee to The Fifth Third Bank (the “Original Trustee”). The Trustee acts solely in its capacity as trustee, not in its individual capacity.

Bonds, Series 1995 A (Lambuth University Project) (the "Series A Bonds") and (ii) the \$1,700,000 The Health, Educational and Housing Facility Board of the City of Jackson (Tennessee) Higher Education Facility Taxable Revenue Bonds, Series 1995 B (Lambuth University Project) (the "Series B Bonds") (the Series A Bonds and the Series B Bonds are sometimes referred to together herein as the "Bonds").

2. The Issuer loaned the proceeds of the Bonds to Debtor pursuant to that certain Loan and Security Agreement, dated as of September 1, 1995 (the "Loan Agreement"), between Debtor and the Issuer, the rights in which the Issuer has assigned to the Trustee as security for the repayment of the Bonds. Pursuant to the terms of the Loan Agreement, Debtor is required to make payments to the Trustee in amounts sufficient to pay the principal of and interest on the Bonds (such payments, together with other required payments under the Loan Agreement, the "Loan Payments").

3. Debtor's obligation to make the Loan Payments with respect to the Bonds is secured, *inter alia*, by a senior lien on Debtor's most valuable campus buildings and other assets, including security provided under a Deed of Trust and Security Agreement, dated as of September 1, 1995 (the "Deed of Trust"), between Debtor and the Deed of Trust trustee named therein for the benefit of the Trustee.

4. The Indenture, the Loan Agreement, the Deed of Trust, and the other documents pursuant to which the Bonds were issued or are secured are referred to herein as the "Bond Documents."

5. As of the date hereof, the unpaid principal on the Bonds is \$4,960,000.00. Interest, attorneys' fees, Trustee's fees, and other amounts are also due under the Bond

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Objection.

Documents. A principal amortization of \$370,000.00 and an interest payment of \$153,120.00 (for a total of \$523,120.00) are due on the Bonds on September 1, 2011, from monthly Loan Payments required to be made by Debtor under the Loan Agreement. Debtor has not made any monthly Loan Payments under the Loan Agreement since March, 2009. Consequently, Debtor is in default of its obligations under the Bond Documents.

JOINDER

6. The Trustee joins Radian in opposing the relief requested in the Motion. As set forth in the Objection, the Debtor has failed to satisfy its obligations under Section 363 of the Bankruptcy Code that are a prerequisite to obtaining court authority to approve Debtor's entry into the proposed lease arrangement with the State of Tennessee, Board of Regents. Specifically, the Debtor has failed to demonstrate both that the execution of the Lease is an appropriate exercise of its business judgment and that it is in the best interest of its estate and its creditors. Furthermore, given the unfavorable economic terms of the Lease, the Motion fails to demonstrate how the Trustee and the holders of the Bonds will be adequately protected upon Debtor's entry into Lease. Importantly, the Motion fails to identify how the upcoming principal and interest payment (\$523,120.00) on the Bonds will be satisfied and whether the Debtor will be able to maintain insurance on the collateral securing the Bonds.

7. Trustee also joins with Radian in objecting to any request by Debtor waive the stay provided by Rule 6004(h) of the Federal Rules of Bankruptcy Procedure.

RESERVATION OF RIGHTS

8. The Trustee reserves its rights to further address the Motion and the relief requested therein and other related issues and to respond to the Debtor either by further

submission to this Court, at oral argument, or testimony to be presented at any hearing on this matter.

WHEREFORE, for the reasons stated above and as set forth in the Objection, the Trustee respectfully joins Radian in requesting that the Court enter an order (i) denying the Motion as filed; and (ii) granting such other and further relief as the Court deems just and proper.

Dated: Nashville, Tennessee
August 3, 2011

Respectfully submitted:

/s/ Robert P. Sweeter

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Counsel for The Bank of New York Mellon, as Trustee

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Joinder of the Trustee to Radian Asset Assurances Inc.'s Objection to Debtor's Emergency Motion for an Order Authorizing Debtor to Enter into Lease of Premises to the State of Tennessee, Board of Regents was served either electronically via the Court's CM/ECF electronic noticing system, or via first class, postage prepaid, U.S. Mail, on the parties listed below as indicated on this 3rd day of August, 2011.

SERVICE LIST	
All American, Inc. 3230 Summer Ave. Memphis, TN 38112	BancorpSouth P.O. Box 549 Jackson, TN 38302
City of Jackson 107 East Main St., P.O. Box 2391 Jackson, TN 38302	Cline Tours P.O. Box 300148 Memphis, TN 38302
Cross Gate Services, Inc. 1730 Hen Geo Patton Drive Brentwood, TN 37037	Debt Acquisition Co. of America V, LLC 1565 Hotel Circle South, Suite 310 San Diego, CA 92108
FHEG Lambuth University Bookstore 3146 Solutions Center, Store No. 114 Chicago, IL 60677-3001	Health Partners, Inc. 1804 Hwy. 45 By-Pass, Suite 400 Jackson, TN 38305

Hobsons, Inc. P.O. Box 641055 Cincinnati, OH 45264-1055	Jackson Downtown Lions Club P.O. Box 3426 Jackson, TN 38303
Jackson Energy Authority P.O. Box 2288 Jackson, TN 38302-2288	Johnseys Sporting Goods 447 N. Royal Street Jackson, TN 38301-5370
Johnson Controls, Inc. P.O. Box 905240 Charlotte, NC 28290	Kesslers Team Sports 930 East Main Street Richardson, IN 47374
Mac-Gray Corp. 404 Wyman Street, Suite 400 Internal Mail Slot #13 Waltham, MA 02451-1264	Rainey, Kizer, Reviere, Bell PLC 105 S. Highland Ave. Jackson, TN 38301
Riddell All American Sports 4230 Paysphere Circle Chicago, IL 60674	Sleeter Kell Sporting Goods 212 N. Main Street Kennett, MO 63857
Sodexo, Inc. & Affiliates P.O. Box 536922 Atlanta, GA 30353-6922	Three Rivers Systems, Inc. P.O. Box 78609 St. Louis, MO 63178
Waste Management of Jackson – TN P.O. Box 9001054 Louisville, KY 40290	Radian Asset Assurance c/o Peter L. Canzano, Esq. 1501 K. Street, NW Washington, DC 20005 pcanzano@sidley.com
Radian Asset Assurance c/o Stephen W. Ragland, Esq. 100 Peabody Place, Suite 900 Memphis, TN 38103 ragland@bassberry.com	Vincent K. Seiler Spragins, Barnett & Cobb, PLC 312 East Lafayette Street (38301) Post Office Box 2004 Jackson, Tennessee 38302-2004
TN Dept of Labor & Workforce c/o TN Atty Gen Office Bankr Div, Attn: Gina Baker Hantel P.O. Box 20207 Nashville, TN 37202-0207 agbankboswell@ag.tn.gov gina.hantel@ag.tn.gov	TN Dept of Fin & Administration Office of Real Property William R. Snodgrass Tennessee Tower 22 nd Fl., 312 Roas L. Parks Ave. Nashville, TN 37243-1102

Harris Shelton Hanover Walsh, PLLC Attn: Steven N. Douglass 2700 One Commerce Square Memphis, TN 38103-2555 snd@harrishelton.com	Office of the U.S. Trustee Attn: Madalyn Scott Greenwood 200 Jefferson Avenue, Suite 400 Memphis, TN 38103 madalyn.s.greenwood@usdoj.gov
GE Money Bank c/o Recovery Management Systems Corp. 25 SE 2 nd Ave., Suite 1120 Miami, FL 33131-1605 claims@recoverycorp.com	

/s/ Robert P. Sweeter